

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

Case No.: 8:15-bk-09873-CPM
Chapter 7

Edward Gonzalez
Helen Gonzalez

Debtors.

**MOTION TO SELL REAL PROPERTY FREE AND CLEAR OF LIENS,
ENCUMBRANCES AND INTERESTS WITH CONSENT OF ALL LIENHOLDERS**
(27301 Hollybrook Trail, Wesley Chapel, FL 33544)

NOTICE OF HEARING

A PRELIMINARY HEARING in this case will be held on September 19, 2016 at 1:30 p.m. in Courtroom 9B Sam M. Gibbons United States Courthouse, 801 N. Florida Ave., Tampa, FL, 33602, before the Honorable Catherine Peek McEwen, United States Bankruptcy Judge, to consider this matter and transact such other business that may come before the court:

1. The hearing may be continued upon announcement made in open Court without further notice.
2. Appropriate Attire. You are reminded that Local Rule 5072-1(b)(16) requires that all persons appearing in Court should dress in business attire consistent with their financial abilities. Shorts, sandals, shirts without collars, including tee shirts and tank tops, are not acceptable.
3. Avoid delays at Courthouse security checkpoints. You are reminded that Local Rule 5073-1 **restricts the entry of cellular telephones** and, except in Orlando, computers into the Courthouse absent a specific order of authorization issued beforehand by the presiding judge. Due to heightened security procedures, persons must present photo identification to enter the Courthouse.

COMES NOW Stephen L. Meininger, Chapter 7 Trustee, by and through his undersigned counsel, and hereby moves for authority to sell certain improved real property free and clear of all liens, encumbrances and interests, and in support thereof states as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b) (2) (A), (M), (N) and (O).
2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The basis for the relief requested herein are, *inter alia*, 11 U.S.C. §§ 105, 363(b) and Federal Rules of Bankruptcy Procedure 2002 and 6004.

BACKGROUND

4. On September 28, 2015, the Debtor commenced this case by filing a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code (the “Petition Date”).
5. Stephen L. Meininger was appointed Chapter 7 trustee (the “Trustee”).

The Debtor owns real property, by virtue of a deed, located at 27301 Hollybrook Trail, Wesley Chapel, FL 33544, more particularly known as:

ALL THAT CERTAIN PARCEL OF LAND SITUATED IN COUNTY OF PASCO ON THE STATE OF FLORIDA BEING KNOWN AND DESIGNATED AS:

LOT 21, BLOCK 3, SADDLEBROOK VILLAGE WEST UNIT 2B, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN PLAT BOOK 43, PAGE 97 OF THE PUBLIC RECORDS OF PASCO COUNTY, FLORIDA. (the “Property”).

6. The Trustee completed a title search and found that the Property is encumbered by a mortgage lien. By priority, but not including any outstanding property taxes or municipal liens, the Property is encumbered as follows:
 - a. a first mortgage lien exceeding \$358,835.00 and in favor of MERS, Inc. as Nominee for Home Loan Center, Inc., d/b/a LendingTree Loans. Such mortgage was dated May 07, 2006 and recorded on May 15, 2006 in Book 6988, Page 545 in the public

records of Pasco County, FL. The same mortgage was later assigned of record from MERS, Inc. as Nominee for Home Loan Center, Inc., d/b/a LendingTree Loans, its successors or assigns to Green Tree Servicing, LLC a Delaware Limited Liability Company and serviced by DiTech Financial, LLC (the “Secured Creditor”) as set forth in Book 9145, Page 236, recorded February 06, 2015 in the public records of Pasco County, Florida.

7. The Trustee has accepted an offer from Ms. Nancy Zelaya (the Buyer) to purchase this home in the amount of \$ 280,000.00, as payment in full (subject to Court and Lienholder approval). The current offer was not the only offer on the property but is the highest offer. Moreover, the estate believes it is a fair offer for the current economy and the length the property has remained on the market.
8. Any real property taxes will be paid prorated.
9. The sale price of \$280,000.00, net the closing costs and anticipated \$ 6,200.00 11 U.S.C. 503(c) surcharge to the bankruptcy estate, will not be enough to satisfy the outstanding lien. Accordingly, the Trustee will seek approval of the sale by the lien holder(s) of the property. To that end, the lienholders are hereby on notice that if they believe they are receiving less than reasonable value for the release of their liens, they need to object to the proposed sale of the Property.
10. The Trustee has attached a “DRAFT” Settlement Statement that outlines the proposed distribution of the sale proceeds at closing, as Exhibit “A.”
11. The Buyer is a disinterested party, the Trustee finds her to be acting in good faith, and she should be afforded the protections under Section 363(m).

AUTHORITY TO SELL

12. Pursuant to § 363(b)(1) of the Bankruptcy Code, a trustee, after notice and hearing, may use, sell or lease property of the estate other than in the ordinary course of business. Additionally, pursuant to § 363(f) of the Bankruptcy Code, the trustee may sell property free and clear of any interest in such property of an entity other than the estate if (i) permitted under applicable non-bankruptcy law, (ii) the party asserting such interest consents, (iii) the interest is a lien and the purchase price of the property is greater than the aggregate amount of all liens on the property, (iv) the interest is subject of a bona fide dispute, or (v) the party asserting the interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest.
13. Section 363(f) of the Bankruptcy Code is stated in the disjunctive. Thus, it is only necessary for the Trustee to satisfy one of the five conditions of § 363(f).
14. The Trustee avers that he shall satisfy section 363(f) (2) insofar as all lien holders shall consent to a sale of the property under section 363(f) (2), and that she should then be authorized to sell the Property free and clear of all liens, claims, encumbrances and interests.
15. No allegation contained in this Motion or attachments thereto are intended by the Trustee as an attempt to seek approval of professional fees, trustee fees or costs. Amounts denoted for fees or benefit of creditors in the instant motion or attachments thereto are for reference only. Monies collected by the Trustee shall be deposited in an estate account and will be distributed pursuant to applicable bankruptcy law. Moreover, professional compensation and Trustee compensation shall be sought by separate application to the Court.

CONCLUSION

16. The Trustee, in the exercise of his business judgment, believes, and therefore avers, that the proposed sale is in the best interest of the creditors of the bankruptcy estate insofar as there is otherwise no equity in the Property, the Trustee is more familiar with the current market than other interested parties, and a sale under this motion serves the best interest of all interested parties, including the Secured Creditors. The Buyer has agreed, subject to Court approval, to pay to the Trustee the sum of \$ 280,000.00 in exchange for the Property free and clear of all liens, encumbrances, or interests.

WHEREFORE, the Trustee moves for the entry of an Order substantially in the form attached hereto:

- A. Authorizing the sale of the Property to the purchaser free and clear of all liens, encumbrances, or interests of any party; and,
- B. Authorizing the Trustee to take any all actions and to execute any and all documents necessary and appropriate to effectuate and consummate the terms of said sale of the Property free and clear of all liens, encumbrances, or interests, including without limitation, executing a deed conveying the interests of the Debtor or any other party claiming an interest in the Property to the Purchaser;
- C. Authorizing the Trustee and any escrow agent upon the Trustee's written instruction, shall be authorized to make such disbursements on or after the closing of the sale as are required by the purchase agreement or order of this Court, including, but not limited to, (a) all delinquent real property taxes and outstanding post-petition real property taxes pro rated as of the closing with respect to the real property included among the purchased

assets (b) any outstanding Home Owner's Association fee or assessment arrearages; and

(c) other anticipated closing costs:

Total Sales/Brokers Commission:

6% to Century 21 Beggins, Inc. \$ 16,800.00*

*commission is anticipated to be shared with cooperating agent from Ricsan Realty

Title Charges:	\$ 2,779.00
Government recording / transfer charges:	\$ 3,000.00
Escrow Charges:	\$ 2,564.00
Other / Debits (<i>incl. 506(c) surcharge</i>)	\$ 6,565.00
Satisfaction of Liens:	
DiTech Financial (home mortgage)	\$ 251,840.00

- D. Determining that all affected interests have been adjudged and declared to be unconditionally released as to the Property;
- E. Determining that the Buyer has not assumed any liabilities of the Debtor;
- F. Determining that the Buyer is approved as a buyer in good faith in accordance with Section 363(m) of the Bankruptcy Code, and that the Buyer is entitled to all protections of Section 363(m) of the Bankruptcy Code, and
- G. Granting the Trustee such other and further relief as is just and proper.

Respectfully submitted,

/s/ Richard M. Dauval, Esquire

Richard M. Dauval, Esq.

FBN 0664801

Leavengood, Dauval, Boyle & Meyer, P.A.

3900 1st Street North, Suite 100

Saint Petersburg, FL 33703

727-327-3328 x303

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by U.S. Mail and/or electronic delivery to:

Lien Holders: DiTech Financial, LLC, c/o Evan Singer, Esq., ess@padgettlaw.net;

Debtor, Edward Gonzalez and Helen Gonzalez, 27301 Hollybrook Trail, Wesley Chapel, FL 33544

Debtor's Counsel, Lindsay Ruiz Bash Esq., service@jowanna.com

Chapter 7 Trustee, Stephen L. Meininger, slmeininger@earthlink.com

United States Trustee, ustp.region21.ecf@usdoj.gov

and all parties of interest on the Matrix this August 18, 2016.

/s/ Richard M. Dauval, Esquire
Richard M. Dauval, Esq.

American Land Title Association

ALTA Settlement Statement - Combined
Adopted 05-01-2015

ServiceLink, LLC
ALTA Universal ID:
400 Corporation Drive
Aliquippa, PA 15001

File No./Escrow No. : 160127083
 Print Date & Time: July 26, 2016 4:18 pm SL
 Officer/Escrow Officer: SoftProIncomingWires
 : Settlement Location : 400 Corporation Drive
 Aliquippa, PA 15001

Property Address: 27301 Hollybrook Trail
 Wesley Chapel, FL 33544

Borrower: Nancy Zelaya

Seller: STEPHEN MEININGER, TRUSTEE FOR THE ESTATE OF EDWARD AND
 HELEN GONZALEZ
 707 NORTH FRANKLIN STREET
 Tampa, FL 33602

Lender: CrossCountry Mortgage, Inc.

Settlement Date: August 12, 2016
 Disbursement Date: August 12, 2016

Seller		Description	Borrower	
Debit	Credit		Debit	Credit
		Financial		
	280,000.00	Sale Price of Property	280,000.00	
		Deposit or earnest money		2,500.00
		Loan Amount		202,000.00
		Prorations/Adjustments		
	933.22	County Taxes 08/12/16 - 01/01/17	933.22	
	351.20	Assessments 08/12/16 - 07/02/17	351.20	
		Title Charges and Escrow/Settlement Charges		
		ALTA 8.1-06 - Environmental Protection Lien (CLTA 110.9-06) to ServiceLink, LLC	25.00	
		ALTA 9-06 - Restrictions, Encroachments, Minerals to ServiceLink, LLC	187.50	
		Closing Fee to ServiceLink, LLC	600.00	
475.00		Closing Fee to ServiceLink, LLC		

Seller		Description	Borrower	
Debit	Credit		Debit	Credit
		Title Charges and Escrow/Settlement Charges (continued)		
60.00		Deed Prep Fee to Rosenberg LPA		
		Florida Surcharge to ServiceLink, LLC	3.28	
		Lender's Title Insurance to ServiceLink, LLC Coverage: 202,000.00 Premium: 400.00	1,085.00	
		Signing Fee to ServiceLink, LLC	150.00	
		Survey Endorsement to ServiceLink, LLC	25.00	
250.00		Title Search Fee to ServiceLink, LLC		
519.42		REIMBURSEMENT - ESTOPPEL to ServiceLink, LLC		
1,475.00		Owner's Title Insurance to ServiceLink, LLC Coverage: 280,000.00 Premium: 1,475.00		
		Commissions		
8,400.00		COMMISSION to RICSAN REALTY		
8,400.00		COMMISSION to Century 21 Beggins Enterprises		
		Government Recording and Transfer Charges		
60.00		Recording Fees to ServiceLink Advance Recording Account		
		mortgage recording fee to ServiceLink Advance Recording Account	257.50	
1,960.00		TRANSFER TAX to ServiceLink Advance Recording Account		
980.00		transfer tax to ServiceLink Advance Recording Account		
		Payoff(s)		
251,840.00		Payoff of First Mortgage Loan		
		Loan Payoff 251,840.00		
		Total Payoff 251,840.00		
		Miscellaneous		
		Homeowner's Insurance Premium to SENECA	754.00	
6,200.00		BK ESTATE FEE to STEPHEN MEININGER, TRUSTEE FOR THE ESTATE OF EDWARD AND HELEN GONZALEZ		
		HOA FEES: SZ2M32P9M to WESTBROOK ESTATES HOMEOWNERS ASSOCIATION, INC	198.00	
205.00		LIEN SEARCH to Reliable Lien Search Inc.		
160.00		REKEY FEE to BK Global		

Seller		Description	Borrower	
Debit	Credit		Debit	Credit
		Miscellaneous (continued)		
300.00		UTILITIES - 27301 HOLLYBROOK TRL to PASCO COUNTY UTILITIES		
Seller			Borrower	
Debit	Credit		Debit	Credit
281,284.42	281,284.42	Subtotals	284,569.70	204,500.00
		Due from Borrower		80,069.70
281,284.42	281,284.42	Totals	284,569.70	284,569.70

Acknowledgement

We/I have carefully reviewed the ALTA Settlement Statement and find it to be a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction and further certify that I have received a copy of the ALTA Settlement Statement. We/I authorize ServiceLink, LLC to cause the funds to be disbursed in accordance with this statement.

Borrower

Seller

STEPHEN MEININGER, TRUSTEE FOR THE
ESTATE OF EDWARD AND HELEN GONZALEZ

BY:

SL SoftProIncomingWires
Resource Mailbox

Label Matrix for local noticing
113A-8
Case 8:15-bk-09873-CPM
Middle District of Florida
Tampa
Thu Aug 18 15:42:55 EDT 2016

Ditech Financial LLC f/k/a Green Tree Servic
c/o Evan S. Singer
6267 Old Water Oak Rd.
Tallahassee, FL 32312-3844

Bank Global Real Estate Services & Century 2
2000 E. Lamar Blvd., Suite 710
Arlington, TX 76006-7341

Edward Gonzalez
27301 Hollybrook Trail
Wesley Chapel, FL 33544-7498

Richard M Dauval
Leavengood & Nash
3900 First Street North, Suite 100
St. Petersburg, FL 33703 Pinellas 33703-6109

Helen Gonzalez
27301 Hollybrook Trail
Wesley Chapel, FL 33544-7498

LVNV Funding, LLC
C/O Corporation Service Company
1703 Laurel St.
Columbia, SC 29201-2660

Recovery Management Systems Corp.
Attn: Ramesh Singh
25 SE Second Avenue, Ste 1120
Miami, FL 33131-1605

Westbrook Estates Homeowners Association, In
c/o Becker & Poliakoff
111 N. Orange Avenue, Suite 1400
Orlando, FL 32801-2324

Ally
P.O. Box 380902
Bloomington, MN 55438-0902

Ally Financial
PO Box 130424
Roseville MN 55113-0004

Amazon
Synchrony Bank
P.O. Box 96501
Orlando, FL 32896-0001

Bush Ross, P.A.
1801 N. Highland Avenue
Tampa, FL 33602-2656

CCB Credit Services
8300 South 6th Street
Springfield, IL 62703

Capital Recovery V, LLC
c/o Recovery Management Systems Corporat
25 SE 2nd Avenue Suite 1120
Miami FL 33131-1605

Comenity Capital Bank
C O WEINSTEIN & RILEY, PS
2001 WESTERN AVENUE, STE 400
SEATTLE, WA 98121-3132

Credit Control LLC
5757 Phantom Drive, Suite 330
Hazelwood, MO 63042-2429

Credit One Bank
P.O. Box 60500
City of Industry, CA 91716-0500

Crown Asset Management, LLC
3100 Breckinridge Blvd., Suite 725
Duluth, GA 30096-7605

Ditech, a Walter Company c/o
Green Tree Servicing
P.O. Box 6154
Rapid City, SD 57709-6154

Hyundai Motor Finance
Post Office Box 650805
Dallas, TX 75265-0805

Internal Revenue Service
P.O. Box 621501
Atlanta, GA 30362-3001

Keiser University Lakeland
2400 Interstate Drive
Lakeland, FL 33805-2316

LVNV Funding, LLC its successors and assigns
assignee of FNEM, LLC
Resurgent Capital Services
PO Box 10587
Greenville, SC 29603-0587

Northstar Location
4285 Genesee Street
Buffalo, NY 14225-1943

Pay Pal Credit
P.O. Box 105658
Atlanta, GA 30348-5658

(p)PORTFOLIO RECOVERY ASSOCIATES LLC
PO BOX 41067
NORFOLK VA 23541-1067

Quantum3 Group LLC as agent for
Crown Asset Management LLC
PO Box 788
Kirkland, WA 98083-0788

Recovery Management Systems Corporation
25 S.E. 2nd Avenue, Suite 1120
Miami, FL 33131-1605

Rooms To Go
Synchrony Bank
P.O. Box 965036
Orlando, FL 32896-5036

Sam's Club
Synchrony Bank
P.O. Box 530942
Atlanta, GA 30353-0942

Santander Consumer USA
P.O. Box 660633
Dallas, TX 75266-0633

(p) SPRINGLEAF FINANCIAL SERVICES
P O BOX 3251
EVANSVILLE IN 47731-3251

USAA Savings Bank
10750 McDermott Freeway
San Antonio, TX 78288-1600

Westbrook Estates Homeowners Association
c/o Becker & Poliakoff
111 N. Orange Avenue, Suite 1400
Orlando, FL 32801-2324

Westbrook Estates Homeowners Association, In
4131 Gunn Highway
Tampa, FL 33618-8725

Stephen L Meininger +
707 North Franklin Street
Suite 850
Tampa, FL 33602-4400

Robyn Marie Severs +
Becker & Poliakoff
111 N. Orange Avenue, Suite 1400
Orlando, FL 32801-2324

United States Trustee - TPA7/13 +
Timberlake Annex, Suite 1200
501 E Polk Street
Tampa, FL 33602-3949

Richard M Dauval +
Leavengood, Nash, Dauval & Boyle, PA
3900 First Street North, Suite 100
St. Petersburg, FL 33703-6109

Richard M Dauval, Attorney for Trustee +
Leavengood, Nash, Dauval & Boyle, PA
3900 First Street North, Suite 100
St. Petersburg, FL 33703-6109

Thomas A Lash, Attorney for Trustee +
Lash, Wilcox & Grace PL
4950 W. Kennedy Blvd., Suite 320
Tampa, FL 33609-1830

Lindsay Ruiz Bash +
Matthew J. Jowanna, P.A.
2521 Windguard Circle, Suites 101 & 102
Wesley Chapel, FL 33544-7346

Santander Consumer USA (MB) +
5201 Rufe Snow Drive Suite 400
North Richland Hills, TX 76180-6036

Evan S Singer +
Timothy D Padgett PA
6267 Old Water Oak Road
Suite 203
Tallahassee, FL 32312-3858

Note: Entries with a '+' at the end of the
name have an email address on file in CMECF

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Portfolio Recovery Assoc.
Post Office Box 12914
Norfolk, VA 23541

(d) Portfolio Recovery Associates, LLC
POB 41067
Norfolk VA 23541

Springleaf Financial
P.O. Box 742536
Cincinnati, OH 45274

(d) Springleaf Financial Services
P.O. Box 3251
Evansville, IN 47731-3251

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u) Catherine Peek McEwen
Tampa

(d) LVNV Funding, LLC
c/o Corporation Service Company
1703 Laurel St
Columbia, SC 29201-2660

End of Label Matrix
Mailable recipients 45
Bypassed recipients 2
Total 47